

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )

NUMBER 55-9279 (a21856) )

MEMORANDUM DECISION

Change Application Number 55-9279 (a21856), in the name of Utah Water Company L.L.C., was filed on November 10, 1997, to change the point of diversion, place of use, and nature of use of 15.0 acre-feet of water. Heretofore, the water has been diverted from Ontario Drain Tunnel, located South 1640 feet and West 1750 feet from the NE Corner of Section 24, T2S, R4E, SLB&M, and used for generation of power and for other purposes, including irrigation as described in the Provo River Decree.

Hereafter, it is proposed to divert 15.0 acre-feet of water from a well, located North 4700 feet and East 3200 feet from the SW Corner of Section 25, T3S, R6E, SLB&M, an eight inch diameter well, 100 feet to 1500 feet deep. It is proposed to use the water for the irrigation of 3.20 acres from April 15 to September 15, the domestic purposes of 12 families, and for fire protection in Sections 27 through 34 of T3S, R6E, SLB&M.

The application was advertised in The Wasatch Wave on February 11, 1998, and February 18, 1998, and was protested by Central Utah Water Conservancy District, Midway Irrigation Company, Provo River Water Users Association, Salt Lake City Corporation, US Bureau of Reclamation, and United Park City Mines Company. The protest from United Park City Mines Company was later withdrawn. In the written protests it is stated that the diversion of water upstream from Jordanelle Reservoir will impair the rights of Central Utah Water Conservancy District; that if water is to be replaced in Jordanelle Reservoir, the rights between the proposed diversion and the Jordanelle Reservoir would be impaired; that the return flow from domestic use in a mountain situation is nonexistent, the underlying water right has historically been a nonconsumptive right and now it is proposed to be used consumptively; and that a strict accounting system to regulate this change is needed. Responses to the protests were received from the applicants stating that the water diverted from the proposed well sites would not be tributary to the Provo River above Jordanelle nor to Lake Creek, the water has been used for municipal use in Orem City which has been consumptive, there will be a direct replacement of water from the Ontario Drain Tunnel to Jordanelle Reservoir for all water diverted, and the administration of the change application would be handled by the State Engineer or his duly appointed river commissioner.

A hearing was held on May 6, 1998, at the Jordanelle State Park. At the hearing the applicants stated that the water will be replaced on a one to one basis from the Ontario Drain Tunnel for all water diverted. Further explanation included a description of the project consisting of 160 acre lots with one home and a caretaker home on each lot; the application was filed for year-round use, but in all likelihood would only be seasonal, and a description of the geology of the area was given to demonstrate that the water diverted by the proposed wells would be tributary to the Heber Valley below Jordanelle. The total flow from the Ontario Drain Tunnel is about 8000 gpm, with a pumping rate of 2700 gpm. If no pumping occurred, the tunnel would eventually naturally rise to about the 8000 gpm level. The protestants reiterated their protests and further stated that the septic systems do not work properly in the mountain settings with shallow depth to bedrock; the water would go into the shallow groundwater and be consumed by

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the vegetation. Irrigation water would similarly involve almost total consumption.

The State Engineer has reviewed the change application, the underlying water right, the protests, the information submitted at the hearing, geohydrology of the area, and the extant literature regarding the area and has noted the following:

- A. The applicants are proposing that for every acre-foot diverted from the proposed well sites, an acre-foot is released to Jordanelle Reservoir by the Provo River Commissioner. The water released will make up part of the natural flow of the Provo River and be administered under the regulation of the river commissioner.
- B. Evidence was presented at the hearing to give the State Engineer a reason to believe that the water diverted from the proposed wells would be tributary to the Heber Valley. The water released from the Ontario Drain Tunnel could replace that water.
- C. The protestants have provided testimony regarding the total consumption use of the proposed uses, due to the high mountain setting with shallow soil profile where the water would be consumed by the natural vegetation. The State Engineer is of the opinion that the uses as proposed in the high mountain setting would return less water than the same uses in a valley area, but total consumption is not likely. However, because the applicants are proposing that the water be replaced on a one to one basis, return flow is not an issue at this time.
- D. The water right upon which this change application is based is part of the Provo River Decree which is very general regarding all of the authorized uses. The State Engineer cannot adjudicate the right; however, there is sufficient evidence that it is valid and has been utilized within the last five years in an amount necessary to support this change.
- E. The right upon which this change application is based is from the Ontario Drain Tunnel and is subject to other rights and a reservation. The first 5.5 cfs from the tunnel goes to Midway Irrigation Company. One half of the water above the first 5.5 cfs, which is the right upon which this change application is based, is to go to Utah Power and Light Company, which right has been deeded to Utah Water Company LLC. There is one reservation on the parent water right; 200 acre-feet of water annually is reserved to United Park City Mines. This reservation will have to be honored.

It is the opinion of the State Engineer that the change application can be approved, provided certain conditions are imposed. In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

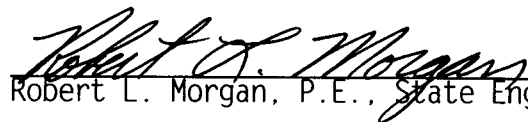
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It is, therefore, **ORDERED** and Application Number 55-9279 (a21856) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The applicants shall install permanent measuring devices on all diversion structures. The Ontario Drain Tunnel shall be equipped with a real-time gauge. The data from the real-time gauge shall be available to the Provo River Commissioner.
2. The Provo River Commissioner shall release to the natural flow of the Provo River sufficient quantities of water from the Ontario Drain Tunnel so that the amount released from the Ontario Drain Tunnel less four percent is equal to the amount of water diverted from the proposed well. Should this four percent loss be studied in depth, this amount may be altered due to the findings of such a study.
3. Any and all costs associated with the administration and distribution of this change application by the duly appointed Provo River Commissioner shall be the responsibility of the applicants.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 6th day of August, 1998.

  
Robert L. Morgan, P.E., State Engineer

RLM:JER:et

Mailed a copy of the foregoing Memorandum Decision this 6th day of August, 1998, to:

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